IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

FIRST APPEAL NO. 310 OF 2001

United India Insurence Co.Ltd.
Mumbai Regional Office,
Maker Bhavan No.1, 3rd floor,
Sir V.T. Marg, Mumbai-400 020 ...Appellants (Orig.Opp.No.3 Insurer)

V/s

1. Shri Bajirao Tatyaba Kondhalkar

2. Shri Rajaram Tatyaba Kondhalkar

Both residing at Kambre (Khe Ba)
Tal. Bhore,dist. Pune ..Resp.No.1 & 2 (Orig.Applicants)

3. Shri Manik Vinayak Deokar,
R/o 6061 Shukrawar Peth,
Mandai, Pune-411002 Respondent NO.3 (Org.Opp.Party No.1 driver.)

4. Shri Suresh Shivaji Sonawane,
Residing at 926, Shivaji Nagar,
Ferugusson Road, Pune 411004. Respondent 4, (Orig.Opp.party No.2 owner of Autorickshaw)

Ms. V.M. Sawant for Mr. M.S. Sawant for the appellants.

Mr. Sandip V. Marne for respondent NO.2.

CORAM : ANOOP V.MOHTA J.
DATE : 12TH DECEMBER, 2005.

P.C.

. By this appeal the Insurance Company-original opponent N0. 3- Insurer has challenged the judgment and

order dated 16/9/1999, passed by the Motor Accident Claim Tribunal, Pune (Motor Accident Tribunal) Whereby, an application of applicant- respondent no.2 has been allowed and all the opponents made jointly and severally liable to pay Rs. 40,000/- with interest at the rate of 12% p.a. from the date of application till payment. None appeared for the respondent No.4. The appeal against the driver is already dismissed. Therefore, except insurer-appellant, no one has challenged the impugned order. It remained intact.

2. The learned Counsel appearing for the appellant, submitted based on the admission given by Suresh Sonawane, the owner of the rickshaw that the rickshaw was insurered with opponent No.3 and he was prosecuted for handing over the rickshaw to the driver who was not having licence. The basic contention appears therefore, in view of this, that there is a "fundamental breach" of the terms and conditions, as observed in National Insurence Co. Ltd. V. Swarn Singh and others) (Accidents Claims Journal 2004 (Vol.I). 1), in para 102 (vi). The concept of fundamental breach in the facts and circumstances of the case cannot be extended to the said admission given by the owner in the

cross-examination. Such breach even, if any, cannot be said to be fundamental unless, it is proved that the said breach of handing over the vehicle or autorickshaw to the person who had no licence, was continued and repeated in the present case also. Such prosecution cannot be said to be same in each and every matter unless proved by the parties, basically appellant. Admittedly, no evidence was led by the appellant in this matter against the driver or owner to that extent and also specifically of proving the allegations of negligence.

3. The learned Counsel appearing for the claimant has strongly relied on the same judgment National Insurence Co. Ltd. (Supra) specially para 102 (iii) as under;

"Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty or negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."

In view of this, mere allegations are not sufficient to

interfere with the findings given by the Court below, as admittedly no substantial evidence brought on record to support his case against the owner or the driver of the vehicle.

4. The Apex Court in (Punam Devi and Another V. Divisional Manger, New India Assurance Co. Ltd. And others((2004) 3 S.C.C. 386) further observed that the Insurence Company must link the evidence that the offending driver has no valid licence. In the present case as the appellant has not discharged this burden, there is no reason to interfere with the order passed by the Tribunal. No other challenge as raised is available to the appellant, especially of the negligence or and the quantum of compensation, as awarded by the Tribunal.

5. Taking all this into account, the present appeal is dismissed. No order as to cost.

[ANOOP V. MOHTA, J.]

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

CIVIL APPLICATION NO. 670 OF 2000
IN
FIRST APPEAL NO. 310 OF 2001

United India Insurence Co.Ltd.
Mumbai Regional Office,
Maker Bhavan No.1, 3rd floor,
Sir V.T. Marg, Mumbai-400 020 ...Appellants (Orig.Opp.No.3 Insurer)

V/s

1. Shri Bajirao Tatyaba Kondhalkar

2. Shri Rajaram Tatyaba Kondhalkar

Both residing at Kambre (Khe Ba)
Tal. Bhore,dist. Pune ..Resp.No.1 & 2 (Orig.Applicants)

3. Shri Manik Vinayak Deokar,
R/o 6061 Shukrawar Peth,
Mandai, Pune-411002 Respondent NO.3 (Org.Opp.Party No.1 driver.)

4. Shri Suresh Shivaji Sonawane,
Residing at 926, Shivaji Nagar,
Ferugusson Road, Pune 411004. Respondent 4, (Orig.Opp.party No.2 owner of Autorickshaw)

Ms. V.M. Sawant for Mr. M.S. Sawant for the appellants.

Mr. Sandip V. Marne for respondent NO.2.

CORAM : ANOOP V.MOHTA J.
DATE : 12TH DECEMBER, 2005.

P.C.

. In view of the reasoning in First Appeal No.310 of 2001, this Civil Application is also disposed of, as rejected.

[ANOOP V. MOHTA, J.]